

ORDINANCE NO. 28596

**AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING
SECTIONS 15.26.100, 15.26.120, 15.26.130, 15.26.140,
15.26.145 AND 15.26.180 OF CHAPTER 15.26 OF TITLE 15
OF THE SAN JOSÉ MUNICIPAL CODE TO ALLOW ANNUAL
AUTOMATIC ADJUSTMENT OF THE UNDERGROUND
UTILITY FEE AND REIMBURSEMENT TO DEVELOPERS FOR
COMPLETION OF UNDERGROUND UTILITY PROJECTS AND
TO MAKE TECHNICAL CHANGES**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

SECTION 1. Section 15.26.100 of Chapter 15.26 of Title 15 of the San José Municipal Code is amended to read as follows:

15.26.100 Fee Required

Unless otherwise exempt under the provisions of this Chapter, approval of any development project in the City shall be subject to a condition for the payment of a utility undergrounding fee as set forth in this Chapter.

SECTION 2. Section 15.26.120 of Chapter 15.26 of Title 15 of the San José Municipal Code is amended to read as follows:

15.26.120 Underground Utility Fund - Use of Fees

- A. All fees collected pursuant to the provisions of this Chapter shall be placed in the Underground Utility Fund established by Part 35 of Chapter 4.80 of the San José Municipal Code.

- B. All fees collected pursuant to the provisions of this Chapter shall be used solely for the conversion of overhead utility facilities to underground facilities on designated streets within the City. The fees may be used for any and all of the following purposes:
1. Payment to utility companies subject to Cal. P.U.C. Rule 20, Tariff Schedule Cal. P.U.C. No. A2, or the City's cable franchise for the costs of converting their existing overhead utility facilities with underground facilities in the public right-of-way.
 2. Reimbursement of a project applicant for the costs of converting existing overhead utility facilities to underground facilities on designated streets within the City which are being converted pursuant to Section 15.26.180. The amount of reimbursement shall be no more than the principal amount of fees previously collected by the City from development projects:
 - (a) Located on the opposite side of the street from the applicant's development project that are within the applicant's project site frontage; or
 - (b) Within the boundaries of the undergrounding project area if the project applicant elects to underground facilities beyond the applicant's project site frontage; and
 - (c) Reimbursement of the project applicant shall be made pursuant to a City-private developer contract in accordance with Chapter 14.04 of the San José Municipal Code or a subdivision improvement agreement in accordance with Chapter 19.32 of the San José Municipal Code;

3. City costs to convert City overhead utility facilities to underground facilities;
 4. Contributions to underground utility districts that are established on designated streets pursuant to Chapter 15.24 of the San José Municipal Code;
 5. Payment of City expenses for staff, equipment, supplies and overhead associated with the establishment and administration of undergrounding projects eligible for funding under this Chapter or that are otherwise subject to contribution pursuant to subsection B.4;
 6. Contributions to a revolving fund for the purpose of performing work pursuant to Section 15.24.170 of Chapter 15.24 of this Title, with such contributions not to exceed ten percent (10%) of the total fees collected under this Chapter;
 7. Payment to utility companies in connection with provision of underground service laterals to properties in designated underground utility districts, including a maximum of one hundred (100) feet of electric service trenching and underground conductor (as measured from property line) as well as backfill, paving, and conduit.
- C. Nothing in this Chapter is intended to affect the amount of reimbursement which would otherwise be paid to utilities, under applicable laws, rules, regulations, and tariffs, for undergrounding of utilities.

SECTION 3. Section 15.26.130 of Chapter 15.26 of Title 15 of the San José Municipal Code is amended to read as follows:

15.26.130 Amount of Fee

- A. The base undergrounding utility fee shall be \$395.00 per linear foot of the project site frontage adjacent to a designated street or streets. A development project subject to this Chapter shall be required to pay the undergrounding utility fee in the amount specified as follows:

<i>Type of Project</i>	<i>Percentage of Base Fee</i>
New development or expansion or modification of existing use resulting in fifty percent (50%) or greater increase in intensification of use	100
Expansion or modification of existing use resulting in increased intensity of use by at least twenty-five percent (25%), but less than fifty percent (50%)	50
Expansion or modification of existing use resulting in increased intensity of use by more than five percent (5%), but less than twenty-five percent (25%)	25
Expansion or modification of existing use resulting in increased intensity of use by less than five percent (5%)	10

- B. The base undergrounding utility fee specified in subsection A above shall be adjusted annually by the Engineering News-Record Construction Cost Index or its equivalent and shall take effect on January 31 of every year.

SECTION 4. Section 15.26.140 of Chapter 15.26 of Title 15 of the San José Municipal Code is amended to read as follows:

15.26.140 Exemptions

The following development projects are exempt from the provisions of this Chapter:

- A. Projects for which street frontage is solely adjacent to a street or streets within an underground utility district established prior to July 1, 1988.
- B. Projects on a site for which a total of one hundred percent (100%) of the base fee has been paid as satisfaction of a condition or conditions imposed upon prior development on that site.
- C. Minor projects as defined in Section 15.26.040.
- D. Renewals of existing conditional use permits.
- E. Projects for which the Director of Public Works determines underground installation of overhead utility facilities would be unreasonable or impractical due to physical constraints such as topography or soil conditions.

SECTION 5. Section 15.26.145 of Chapter 15.26 of Title 15 of the San José Municipal Code is amended to read as follows:

15.26.145 Subdivision of Residential Lands

At the discretion of the Director of Public Works, a subdivision of land zoned for residential purposes may be exempted from the requirements of this Chapter if the land is being divided into parcels larger than that appropriate for residential lots, and further subdivision of the property will be required prior to development of the land for residential purposes.

SECTION 6. Section 15.26.180 of Chapter 15.26 of Title 15 of the San José Municipal Code is amended to read as follows:

15.26.180 Election to Underground Utilities as a Part of Project

At the discretion of the Director of Public Works, approval of a development project may be conditioned upon actual undergrounding of overhead utility facilities on the street or streets adjacent to the project, rather than payment of fees pursuant to this Chapter, if:

- A. The project applicant alone or together with owners of adjacent properties, has committed to establishment of a Cal. P.U.C. Rule 20B/Tariff Schedule Cal. P.U.C. No. A2, Rule No. 32, A.2 underground utility district which will cause undergrounding of all overhead utilities facilities in the street or streets adjacent to the project site; or

/////

/////

/////

/////

/////

/////

/////

/////

- B. The project applicant has requested to undertake actual undergrounding of all overhead utility facilities in the street or streets adjacent to the project site.

PASSED FOR PUBLICATION of title this 16th day of June, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NGUYEN.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk